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Attorneys for Defendant
Louisville Ladder Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CESAR U. MORENO
CASTELLANOS, a/k/a CESAR
MORENO, an Individual,

Plaintiff,

vs.

LOUISVILLE LADDER INC.,
and DOES 1 to 25, Inclusive,

Defendants.

CASE NO. C 08-02009 BZ

Honorable Maxine M. Chesney

**Declaration of Randolph T. Moore in
Response to OSC re Remand**

COMPLAINT FILED: March 21, 2008
Trial Date: None

I, Randolph T. Moore, declare as follows:

1. I am an attorney licensed to practice in the State of California and the District Court for the Northern District of California, and I am counsel of record for defendant Louisville Ladder Inc. ("Defendant"). I make this declaration in support of Defendant's response to the Court's June 26, 2008 Order to Show Cause why this case should not be remanded to the Superior Court. I have personal knowledge of the facts stated below.

2. On April 17, 2008, I filed the Defendant's Notice of Removal under 28 U.S.C. §1332(a) based upon the parties' diversity of citizenship. In the Notice of Removal, I alleged that the amount in controversy exceeded \$75,000 based upon the

Declaration of Randolph T. Moore in Response
to OSC re Remand
Case No. C 08-02009 BZ

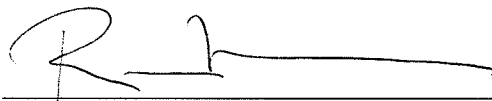
1 Plaintiff's complaint, in which he alleged that his damages include wage loss, hospital and
 2 medical expenses, general damages, loss of earning capacity, emotional distress, pain and
 3 suffering, and permanent disability. The allegation was also based upon my conversation
 4 with Plaintiff's counsel, in which he described the nature and extent of the Plaintiff's
 5 permanent injuries.

6 3. Plaintiff has since confirmed that his alleged damages exceed the amount of
 7 \$75,000 in his Voluntary Disclosure Statement pursuant to FRCP, Rule 26(a), a true and
 8 correct copy of which is attached as Exhibit 1. Because of the voluminous and personal
 9 nature of the exhibits attached to Plaintiff's disclosure statement (they include tax
 10 records), I have not included them as an attachment to this exhibit. According to
 11 Plaintiff's disclosure statement, he fractured and severely twisted his thoracic spine at the
 12 T-11 and T-12 levels and is now disabled. He claims that he will no longer be able to
 13 work again in the construction industry, his prior occupation. Plaintiff has incurred
 14 \$36,039 in past medical expenses and \$45,750 in past wage losses. In this action, Plaintiff
 15 claims that he will sustain an economic loss of \$2,012,189 and a non-economic loss of
 16 \$2,235,625. Plaintiff seeks \$4.2 million in damages against Defendant.

17 4. Since Plaintiff's stated claim exceeds the amount in controversy required
 18 under 28 USC § 1332(a), Defendant respectfully submits that the court should not remand
 19 this action to the Superior Court.

20 I declare under penalty of perjury under the laws of the State of California
 21 that the foregoing is true and correct.

22 Executed this 3rd day of July, 2008, at Costa Mesa, California.

23 

24 Randolph T. Moore
 25
 26
 27
 28

Cesar U. Moreno Castellanos v. Louisville Ladder, Inc.

USDC – Northern Division

Case No. C08-02009 BZ

PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 600 Anton Boulevard, Suite 1400, Costa Mesa, California 92626.

On July 3, 2008, I served, in the manner indicated below, the foregoing document described as:

DECLARATION OF RANDOLPH T. MOORE IN RESPONSE TO OSC RE REMAND on the interested parties in this action:

**Thomas J. Gundlach, Esq.
700 Larkspur Landing Circle,
Suite 175
Larkspur, CA 94939**

TEL: 415-925-9488
FAX: 415-925-9489

☒ BY E-FILING (USDC Central): I caused such document to be sent electronically to the court; pursuant to General Order No. 08-02, electronic filing constitutes service upon the parties who have consented to electronic service.

☒ FEDERAL: I declare that I am employed in the office of a member of the bar of this Court, at whose direction the service was made.

EXECUTED on July 3, 2008, at Costa Mesa, California.

//s// Sandi Martinez
Sandi Martinez

1 **Thomas J. Gundlach, (State Bar #42847)**
2 **LAW OFFICES OF THOMAS J. GUNDLACH**
3 **700 Larkspur Landing Circle, No. 175**
4 **Larkspur, CA 94939**
5 **Telephone: (415) 925-9488**
6 **Facsimile: (415) 925-9489**
7 **tgundlach@aol.com**

8 **Attorney for Plaintiff,**
9 **Cesar U. Moreno**

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 **CESAR U. MORENO CASTELLANOS,**)
13 **a/k/a CESAR MORENO, an individual**)

14 **Plaintiff,**)

15 **vs.**)

16 **LOUISVILLE LADDER INC., and**)
17 **DOES 1 to 25, inclusive,**)

18 **Defendants.**)
19

Case No. C08 2009 BZ

**PLAINTIFF'S VOLUNTARY
DISCLOSURE STATEMENT
PURSUANT TO FRCP, RULE 26 (a)**

Complaint Filed: March 21, 2008 in
Napa County Superior
Court
Removed: April 17 2008

20 Plaintiff's voluntary disclosure statement follows:

21 **I. STATEMENT OF THE CASE**

22 This is a personal injury action arising out of strict products liability. Cesar Moreno was
23 born in Los Angeles and is 27 years old. He is married, has three children, and his wife works for a
24 child care center. Cesar is a highly skilled sheet rock hanger with six years experience. On June 7,
25

2007, while working on a home in St. Helena, CA, Cesar fell from a 16 foot extension ladder and broke his back (i.e., fractured and severely twisted T-11 and T-12). He is now disabled and will not be able to work in the construction industry again. As a result, he will sustain economic loss of \$2,012,189 and noneconomic loss of \$2,235,625. In total, he seeks \$4.2 million in damages against the manufacturer of the extension ladder.

Louisville Ladder, Inc. (hereinafter "LLI"), is a Delaware company with a place of business in Louisville, KY. It is a wholly owned subsidiary of Verzatec S.A.B. de C.V. (hereinafter "Verzatec"), a Mexican company. LLI was formed in 2005. It imports ladders Verzatec makes at its plant in Mexico and resells them to retailers in the United States under the name "Louisville Ladder". However, Louisville Ladders no more has anything to do with Louisville, KY then it does with the "Louisville Slugger" (a classic brand name denoting strength, length and durability).

In May, 2005, LLI placed a defective fiberglass and aluminum extension ladder (Model # L-3121) in the flow of commerce. The rung lock plate on that ladder is defective in that it is subject to fracturing under normal wear and tear. In turn, fracturing promotes corrosion and that can result in catastrophic failure (as was the case here). David Lopez, an electrician, purchased an L-3121-16 from Home Depot in Napa, CA. About a year later, Cesar Moreno used that ladder to mud around two windows 12 feet above the floor at a residence in St. Helena, CA. As Mr. Moreno was mudding, he felt the left side of the ladder give and fell 12 feet to the floor below. He broke his back and suffered a severely strained shoulder. He continues to treat and it is more medically probable than not Cesar will suffer permanent disability.

II. EVIDENCE (*Witnesses, Summary Of Witness Testimony; Trial Exhibits*)

The following is a list of potential witnesses and a summary of what each may say as well as an identification of likely trial exhibits.

1 1. Cesar Ulises Moreno Castellanos (a/k/a and hereinafter "Cesar Moreno")
2 1020 Garfield Drive
3 Petaluma, CA 94954
4 707-769-1071

5 *Background.* Cesar Moreno was born in LA on May 8, 1980. **EXHIBIT 3.** He obtained the
6 equivalent of a high school education in Mexico and returned to the U.S. in 1996. He and his family
7 moved to Novato, CA. He married and has three children. His wife works for a child care center.
8 On moving to Novato, Cesar went to work for a sheet rock hanger and taper named Trainer Drywall.
9 Two years later he went to work for Green Point Nursery. In 1999, Cesar was hired by Triple A
10 Drywall in San Anselmo, CA. He worked there for nearly 3 years. In 2003, he went to work for
11 Hawkins Drywall Contractor in San Rafael. (**EXHIBIT 6**). Mr. Moreno worked for Hawkins until he
12 was injured on June 7, 2007. At the time of the accident, he was earning \$22/hr. (**EXHIBIT 1**).
13 He was a good worker and expected a raise to \$24/hr shortly.

14 *Ladder Failure.* Cesar believes the left rung lock plate failed causing him to lose his balance
15 and the ladder then collapsing. Cesar attempted to grasp the setback edge of the window but it was
16 too narrow to hold on to. He fell backward and to the right. He banged his head on the corner of
17 the two walls and landed on his back on top of the ladder.

18 *Injuries Sustained.* Cesar broke his back. He sustained two fractured thoracic vertebrae and
19 a severely strained right shoulder which has required surgical repair. He sustained a "compression
20 burst fracture of T12 and an end-plate fracture of T11...". In addition, T-12 is twisted 16 degrees in
21 relation to T-11 and T-11 is slightly twisted itself. Cesar is now disabled and cannot return to work.
22 At the present time, it does not appear he will ever be able to work again, not even at a sedentary job.
23 His back is getting progressively worse causing him to stoop. The pain continues to be excruciating.
24 He requires treatment for depression as a result of the pain. Kaiser Petaluma is now his provider.
25 More surgery is likely.

26 *No Comparative Negligence.* Cesar was not under the influence of drugs or alcohol at the
time of the accident. He will testify the ladder was resting on the hardwood floor not on plastic

1 sheets. He will testify the angle of ascent was the same as he had previously used without incident.
 2 The angle was neither too shallow nor too steep. He is experienced in the use of extension ladders
 3 and has never had an accident on one. Cesar will explain he did nothing to contribute to his fall.
 4 Specifically, he did not lean over, extend the ladder beyond the recommended rung, or set the ladder
 5 at an inappropriate pitch or on an inappropriate surface.

6 There are no eye witnesses. The electrician, David Lopez, was in the front yard when the
 7 accident occurred while Tony Leon, an employee of Schmitt & Co, was in the front room. As a
 8 result, no one saw Cesar fall.

9 *Damages.*

10 *Economic loss*

11 Cesar will testify to his earnings over the past 5 years and to what he believed was a secure
 12 future in the construction industry. **Exhibit 1.** In summary, to date he has lost wages of \$45,750 (40
 13 hrs/wk for 52 weeks at \$22/hr) and incurred medical expenses of at least \$36,039.37. He faces a
 14 huge loss of future wages and significantly more medical expenses. Briefly, at the time he was
 15 injured, Cesar had a work life expectancy of 40 years (i.e., to age 67). Therefore, Cesar will lose
 16 2080 weeks of work at 40 hours per week over the remainder of his work life expectancy. At the
 17 time of loss he was earning \$22/hr. Recognizing a discount factor of .01 or .02 is used to
 18 determine the current value of future money, we offset that discount factor by not ascribing an
 19 increase in wages due to inflation or an anticipated raise. In that instance, Cesar will lose \$1,830,
 20 400. Future medical expenses will exceed \$100,000 (e.g., continued treatment for depression,
 21 rehab, PT, medications, and additional surgery). Therefore, economic loss is as follows:

22	Wage loss to date	\$ 45,750
23	Future wage loss (est)	1,830,400
24	Past Medical expenses (minimum)	36,039
25	Future Medical expenses (est)	<u>100,000</u>

Total	\$2,012,189
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Noneconomic loss

Noneconomic loss is determined by ascribing a figure which will fairly compensate Cesar for his pain and suffering and for his disfigurement. Assuming \$125/day is a fair and reasonable sum and given a life expectancy of 49 years, Cesar's noneconomic loss equals \$2,235,625. Thus, damages exceed \$4 million.

2. Citlaly Cervantes
1020 Garfield Drive
Petaluma, CA 94954
707-769-1071
(Wife of Cesar Moreno)

Citlaly will testify to learning of the accident and of rushing to the hospital to see her husband. She will testify to his pain and his continual struggle to get through each day. He is no longer the man she married and he is no longer the doting father he once was.

3. Jose Antonio Moreno
1020 Garfield Drive
Petaluma, CA 94954
(Son of Cesar Moreno)

He will testify to how difficult it is for his father to get through each day.

4. Adriana Navarro
1020 Garfield Drive
Petaluma, CA 94954
(Daughter of Cesar Moreno)

She will testify to how difficult it is for her father to endure.

3. Miranda Moreno
1020 Garfield Drive
Petaluma, CA 94954
(Daughter of Cesar Moreno)

She will testify how her father has changed since the accident

4. Eric Schmitt
2159 Big Ranch Road
Napa, CA 94558

Mr. Schmitt will testify that he was the general contractor on the job and that the job

1 consisted of replacing certain windows at 1334 Andrea Avenue, St. Helena, CA. He was not present
 2 at the job site on the day of the accident. His foreman was there part of the day. He will state the
 3 electrician was in to install electric openers for the windows above the front door and inward some 6
 4 feet from the door. The electrician was David Lopez, owner/operator of Mack Electric in Napa.
 5 The ladder that failed belonged to Lopez. He will state he called Hawken Drywall to come in and
 6 patch and mud around the replaced windows. He will state the subs were Hawken Drywall, the
 7 sheet rocker (Moreno's employer), Richner Painting, the painter, and David Lopez, the electrician.

8 A copy of Schmitt's deposition taken in the workers' comp matter is attached. **EXHIBIT 2.**
 9 Schmitt testified the only persons present at the time of the accident were Cesar, David Lopez and
 10 Tony Leon.

11
 12 5. John Talbot
 (Schmitt & Co Superintendent on job at 1334 Andrea Ave)
 2159 Big Ranch Road
 13 Napa, CA 94558

14 Mr. Talbot was the superintendent on the job. He is employed by Schmitt & Co. He was
 15 not present at the time of the accident. He authorized Cesar Moreno to use Dave Lopez's ladder
 16 (with Lopez's consent).

17 6. Dan Talbot
 Tony Leon - 1030 Wopalwa Way, Suisun City, CA 707-812-4703
 18 Sal Negrete
 (3 employees of Schmitt & Co who worked on 1334 Andrea Ave job)
 19 2159 Big Ranch Road
 20 Napa, CA 94558

21 These are the three men employed by Schmitt & Co at the time of the accident. Tony Leon
 22 was applying a coat of mud to sheet rock around a window in the family room when he heard a loud
 23 crash. Leon did not see the accident occur. When Leon turned around, he saw Cesar on the floor
 24 and David Lopez running in through the front door.

25 Apparently, Sal Negrete, another employee, may have been at the job site earlier that day but
 26

1 was not see the accident occur.

2 7. David Lopez
3 Mack Electric
4 2014 Imola Ave
5 Napa, CA 94558

6 David Lopez was on the job site when the accident occurred. He was out on the front lawn
7 when he heard a loud crash and came running in the front door. He found Cesar on the floor. He did
8 not see what happened. It was his ladder that Cesar used when it failed. There was nothing wrong
9 with the ladder before the accident. He bought it at Home Depot. He never abused the ladder. He
10 noticed that the feet of the ladder were not set on plastic sheets and that the pitch of the ladder
11 appeared normal and appropriate.

12 8. Gary Brookman
13 1334 Andrea Avenue
14 St. Helena, CA
15 (Owner of 1334 Andrea Ave, St. Helena, CA).

16 He was not present when the accident occurred. Mr. Brookman owns 1334 Andrea Ave.

17 9. Carol Parisek
18 Cal/OSHA
19 1221 Farmers Lane, Suite 300
20 Santa Rosa, CA 95405

21 She is employed by Cal/OSHA. Under California law, reports prepared by Cal/OSHA are
22 admissible to prove third-party liability. Ms. Parisek visited the job site following the accident,
23 interviewed witnesses, took pictures, wrote a report, and made certain findings. Her report is
24 attached. **Exhibit 6.**

25 10. Peter Marlotte
26 Bob Russell
Hawken Drywall
819 A Street, Ste 22
San Rafael, CA 94901

Peter Marlotte is owner/operator of Hawken Drywall in San Rafael. Hawken was Cesar's
employer at the time of the accident. Plaintiff believes Bob Russell is also employed at Hawken.

1 Peter Marlotte or his office manager will testify to Cesar's earnings and to his being a good
2 employee. Cesar knew how to use extension ladders and used them frequently. He was a safe
3 worker. He was in line to get a raise to \$24/hr. Peter took pictures at the scene. He gave a
4 statement to Cal/OSHA. The employee file for Cesar Moreno is attached. **Exhibit 7.**

5 11. Piner's Napa Ambulance Service Inc.
6 1820 Pueblo Ave
7 Napa, CA 94553
8 707-224-7928

Crew: Dick Tsudama
Steven Dykstra

9 Piner was the ambulance company that sent a crew to provide emergency medical assistance
10 to 1334 Andrea Ave. The crew will testify that they ripped the plastic sheets to secure their footing .
11 They also prepared a report which includes their findings and observations. **Exhibit 4.**

12 12. Saint Helena Police Dept
13 Officer S Peterson, id no. 21
14 1480 Main Street
15 St. Helena, CA 94574

16 Officer S Peterson will testify that he was called to the scene and on arriving observed an
17 extension ladder in the front lawn with a "crack in the locking mechanism". He also observed that
18 one of the rungs had pushed through the fiber glass frame. The police report is attached. **Exhibit 5.**

19 13. Queen of the Valley Medical Center
20 1000Trancas Street
21 Napa, CA 94558
22 707-252-4411

23 Queen of the Valley Medical Center is where Cesar was taken by Piner Ambulance. He was
24 treated there and was operated on at Queen. The chart is attached. **Exhibit 8.**

25 The file indicates medical expenses of \$36,039.37 for the period 6/7/07 to 6/17/07.

26 The workers' comp file is attached as **Exhibit 9.**

14. John P. Loftus, MD.

1 1000 Trancas Street
2 Napa CA 94558
707-226-2031

3 Dr. Loftus was the trauma surgeon at Queen of the Valley on Cesar's arrival. He will testify
4 to the nature of injuries Cesar sustained.

5 15. Jason T. Huffman, MD.
6 Napa Valley Orthopaedic Medical Group
1000 Trancas Street
7 Napa, CA 94558
707-226-2031

8 Dr. Huffman was the orthopedic surgeon on call at Queen. He is a spine and back specialist.
9 He treated and continues to treat Cesar. He will testify to the fractured vertebrae, the need for
10 additional surgery, the injured shoulder, the medical likelihood Cesar will be permanently disabled,
11 and the medical probability he will sustain permanent deformity.

12 16. Adam M. Freedhand, M.D.
13 Orthopaedic Surgery
1100 Trancas St., Suite 250
14 Napa, CA 94558
707-254-7117

15 Dr. Freedhand practices with Dr. Huffman and may testify. He may perform additional
16 surgery on Cesar. He has provided some care to Cesar.

17 17. Steven Cardey, M.D.
18 Napa Valley Orthopaedic Medical Group
1000 Trancas Street
19 Napa, CA 94558
707-226-2031

20 Dr. Cardey was the emergency room physician at Queen when Cesar arrived. He will testify
21 to the injuries the patient sustained.

22 18. Kaiser Permanente
23 3900 Lakeville Highway
Petaluma, CA 94954
24 707-765-3786

25 Providers:

1 Edna S. Rivera, M.D.
2 Psychiatrist
3 Dept of Psychiatry

4 Roberto Gonzalez, , PT
5 Elizabeth Ryan

6 These professionals will testify to Cesar's emotional state of mind, to his emotional
7 distress, to the impact the pain is having on him, and to his rehab.

8 19. Kyle Jackson, PT, MS, CSCS
9 Physical Therapy
10 208 Concourse Blvd, Suite 2
11 Santa Rosa, CA 95403
12 707-303-4992

13 He may testify to Cesar's injuries and the progress, if any, he is making.

14 20. Experts

15 While FRCP 26(C) (j) I-ii does not require disclosure of expert witnesses until 90 days prior
16 to trial, generic disclosure is made at this time to hasten trial preparation.

17 Dr. Huffman, the treating orthopedic surgeon, will testify to his findings as set forth in his
18 spine report.

19 An expert on spinal injuries will be called to opine on the medical probability Cesar will
20 sustain permanent injury, will suffer disfigurement, will require more surgery, and will be able to
21 return to work and, if he can, what physical limitations will be placed on him.

22 A vocational rehab specialist will testify to the types of jobs Cesar may qualify for given his
23 injuries and to the wages paid at those various jobs.

24 An economist will testify to the difference between what Cesar could have earned had he not
25 been injured and what he will earn given the job or jobs he may be qualified to do in the future. The
26 differential, discounted to present cash value, is the amount of future wage loss.

An expert on ladder failure including metallurgy will testify to the defect, how it occurred,
and the mechanism of injury.

III. LIST OF DOCUMENTS PRODUCED

1. Tax returns 2003-2007
2. Deposition transcript of Eric Schmitt, general contractor
3. Moreno birth certificate
4. Report from Piner's Napa Ambulance Service, Inc.
5. St. Helena Police Dept Incident Report
6. Cal/OSHA file including interviews, investigatory reports and pictures
7. Hawken Drywall, Inc. Personnel file for Cesar Moreno
8. Queen of the Valley Medical Center chart on Cesar Moreno
9. Worker's comp file
10. DVD of accident reconstruction

IV. LADDER

The subject ladder is in the possession of plaintiff's counsel and can be inspected at 700 Larkspur Landing Circle, Suite 175, Larkspur, CA.

V. ACCIDENT RECONSTRUCTION

Exhibit 10 is a DVD made by plaintiff's counsel and constitutes work product. It is nonetheless produced, without waiving the privilege to illustrate that the windows on which plaintiff was working were set back inward from the front door some 6 to 8 feet. The video was taken at 1334 Andrea Way, St. Helena, CA. Plaintiff does not represent that this DVD is an accurate representation of what occurred but rather an approximation of what may have happened.

VI. ADDITIONAL DISCOVERY

As indicated by enclosures, plaintiff will conduct the following discovery: depose PMKs; obtain responses to interrogatories; obtain documents pursuant to a request therefore; and, obtain admissions to request for admissions. Plaintiff's proposed discovery plan is also enclosed.

1 **VII. UNAVAILABILITY OF COUNSEL**

2 Counsel is unavailable July 7 to July 21 and requests no matter in this case be scheduled
3 during that period of time.

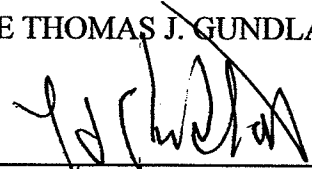
4 **VIII. TRIAL DATE and LENGTH OF TRIAL**

5 Plaintiff will request a November trial date and estimates 6 trial days.

6 DATED: May 21, 2008.

LAW OFFICE THOMAS J. GUNDLACH

7
8 By



Tom Gundlach
Attorney for Plaintiff